

The 1st July, 1987

No. 9/3/87-6 Lab./3661.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/S Universal Electricals Ltd., 20/3 Mathura Road, Faridabad.

IN THE COURT OF SHRI A.S. CHALIA, PRESIDING OFFICER, LABOUR COURT, FARIDABAD.

Reference No. 211 of 1985

between

SHRI TARA CHAND, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. UNIVERSAL ELECTRICALS LTD., 20/3, MATHURA ROAD, FARIDABAD.

Present—

Shri Bhim Singh Yadav, for the workman.

Shri G. D. Maheshwari, for the respondent.

AWARD

This reference under Section 10(1)(c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour) —vide its endorsement No. ID/FD/21-85/18225-30, dated 24th April, 1985 to adjudicate upon the dispute of service matter covered by Second Schedule under Section 7 of the said Act, arisen between Shri Tara Chand, workman and the respondent management of M/S. Universal Electricals Ltd., 20/3, Mathura Road, Faridabad. Accordingly it has been registered as reference No. 211 of 1985.

2. The claim of Shri Tara Chand is that he was appointed by the respondent on 23rd February, 1982 as a helper for six months and that period was extended for further six months and again the same extended from time to time and during the entire period his performance has been good to the satisfaction of the respondent. He had requested the respondent to confirm him in the said job since he had already completed 240 days of service in a continuous manner, but instead of doing so, his services were terminated on 26th September, 1984. He alleged that the said order is without any rhyme, reason, show cause notice, chargesheet and without holding any enquiry and such act on the face of it is illegal, unlawful, malafide, against the principles of natural justice, arbitrary, abuse of managerial power and un-fair labour practice also. To that effect he had served registered a letter upon the respondent and accordingly had requested to reinstate him but without any response. Thereafter he had served a demand notice upon the respondent and matter could not be settled at the conciliation stage and thereafter his service matter has been referred to Labour Court—vide para 6 of his demand notice he has challenged the said order on the grounds enumerated therein. In the end he has requested that he be reinstated into his job with full back wages and further with continuity of service.

3. On notice, respondent has contested the said reference. Objection has been taken that as a matter of fact Tara Chand was employed on temporary basis for a specified period (12th March, 1984 to 24th September, 1984) and his services had come to an end automatically as per terms and conditions of appointment letter. According to it matter in dispute is not a dispute as defined under Section 2-A of the said Act. Further explanation is that in the beginning he was appointed on 23rd February, 1982 and paid off on 28th August, 1982 and thereafter he was re-employed from 20th February, 1983 to 21st August, 1983, 5th September, 1983 to 3rd March, 1984 and then from 12th March, 1984 to 25th September, 1984 and in this manner he had not been in the continuous service and hence not entitled for any relief. Its claim is that it is engaged in manufacturing and supply of defence items exclusively to the Ministry of Defence and as such volume of work depends upon the specific supply orders and for that purpose temporary workmen are engaged from time to time simply to complete the supply order. Then it has also been pointed out that there is workers union and it had entered to a conciliation settlement, dated 5th December, 1982, agreeing not to press their demand regarding confirmation of temporary workmen. It is also averred that his services had automatically come to an end as per terms and conditions of the appointment letters. Other allegations of his, have been emphatically denied. By way of rejoinder Tara Chand has repeated his claim as well as allegations.

3. On the pleadings of the parties, my learned predecessor had framed the following issues on 8th August, 1985 :—

- (i) Whether services of the workman were terminated as per terms and conditions of service?
- (ii) As per reference?

In support of the pleas respondent has examined Shri P.C. Diwedi its Personnel Manager. On the other hand, its clerk has been examined by the workman and he has also appeared. I have heard the parties as represented above. My findings on the said issue are as follows :—

Issue No. I & II

5. Both the issues a Iinter-mixed and as such are being disposed of together. The serious contention of the respondent has been to the effect that this case is covered under Section 2(00) -(bb) of the said Act as amended by Act No. 9 of 1984 and as such he is not entitled for any relief. To have first hand knowledge, I resduce the said sub-Section :—

“2(00).“retrenchment”.....but does not include.....
(bb) termination of the srvice of the workman as a result of the non renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or;

On the other hand, the contention of the workman has been to the effect that he had completed 240 days and as such entitled to be termed as being in continuous service as defined under Section 25-B of the said Act and entitled for protection under Section 25-F. On the face of it the matter appears to be an importnat one and hence requires thorough checking. In between the parties there is no dispute that respondent is engaged in manufacturing items to be supplied to the Defence Ministry and its products are not available in the open markets. It is an importnat future of the case and has to be kept in view. Un-disputedly Tara Chand was appointed on 23rd February, 1982 for six months—vide Ex. M-2 and he had worked upto 28th August, 1982. His application is Ex. M-5 and he was interviewed—vide Ex. M-10. There is no dispute that he was spared on 28th August, 1982 and his accounts were duly settled. It is admitted by his Representative. Further it is also not disputed that he was re-employed on 20th February, 1982—vide letter Ex. M-1, against his application Ex. M.4 and he had worked upto 21st August, 1983 and has spared and accounts were settled. It has been conceded by his representative. Further he was appointed on 5th September, 1983 on the basis of his application Ex. M-13 and was spared on 3rd March, 1984. He was then appointed on 12th March, 1984—vide Ex. M-3 on his application Ex. M-6 and Ex. M-7 and thereafter he was spared and as such there is present dispute. Shri Yadav has seriously relied on 1986-Labour Law Notes page 204 Firozpur Central Cooperative Banks Vs. Labour Court. In that case appointment was made on 12th April, 1980 and he had worked upto 20th July, 1980 (89 days) and after a break of one day he was re-appointed on 12th July upto 8th October, 1980 again for 89 days and after one day break he was appointed on 10th October to 4th December, 1980. In this manner he had worked for 232 days. The Employer had taken the plea that he was employed on temporary basis for a specific period and it was observed that its action had a tent of malice and un-fair labour practice also and as such he was reinstated into the matter. Shri Maheshwari on behalf of the respondent-management has promptly replied that this ruling is not at all applicable on the facts-of the present case since production is meant for defence purposes only and for that purpose recruitment- is to be made on contract basis only. He appears to be very confident about the said plea and in support of the same has referred to several ruling. The amendment referred above was introduced into the Act w.e.f. 18th August, 1984 and cause of action in the present case had arisen on 25th September, 1984 and on the face of it the said amendment is appliable. His first reference is to 1985-Labour and Industrial Cases; page 1833-Jatindera Kumar Vs. Bharat Earth Movers. In that case petitioner was appointed as helper on 11th October, 1983 and his service were terminated on 1st October, 1984. He had taken the plea that he had been in continuous service of one year as defined under Section 25-B of the said Act. The management had taken the protection of said sub-section “bb” as referred and it was held that terms of service on the expiry of the period of employment is valid and it does not amount to termination. This reference has been made to 1986-Labour Law Journal Vol. I page 195 Shankarish Vs. K.S.R.T.C. In that case petitioner was appointed on 6th January, 1983 as a Badly conductor and the same were terminated on 3rd October, 1984. His plea was that it amounted to “retrenchment” in violation of Section 25-F of the said Act. It was held that it was not so since sub-section “bb” referred above was favourable to the management. Observation were that services were terminated according to the terms of the appointment letter and his claim was dismissed. Reference has also been made to 1986-Indian Factories and Labour Reports page 220; State of Rajasthan versus P.W.D. (B &R) Mazdoor Sangh. In that case service of 14th Helper grade II of Mechanical Division were terminated. They were appointed on 11h October, 1979 on purely ad hoc basis for famine operation. That operation was over and services were terminated on 12th December, 1981. They had taken the plea that their services were terminated in violation of Section 25-F since they had already completed 240 days in service. The employer had taken plea that they were appointed for fix terms and on the expiry thereof they were not entitled for any protection. On the basis of proviso of Section 25F(a) it was held that services could be terminated since famine Operation was over and writ Petition was decided in favour of the respondent. Reliance has also been placed on 1987-Labour Law Journal page 141-English Electric Company of India versus Industrial Tribunal. In that case it was held that a casual worker does not become permanent on account of long period of service. In support of the contention reference can also be made to Labour law Journal; 1981 page 195; F.R. Jesurtnam versus Union of India and others.

6. In the present case, there are appointment letters Ex. M-10, M-1 and M-3 also. Therein the letters of supply are mentioned and on that basis appointment is meant for specified period only. Moreover there

have been settlements Ex. M-11 and M-12 also in between the worker's union and management of not pressing the demand of causal workers. Tara Chand has conceded that time bomb fuse and voltage meters were manufactured in the factory and obviously the same are meant for defence purposes. This process of manufacturing the defence items as a matter of fact has been pleasing in disguise for the respondent to depute with the services of its employees, appointed for fix terms and its action is getting support from decided cases referred above.

8. In view of this situation unfortunately I am not in a position to help the petitioner and as such the reference is answered against him and in favour of respondent-management.

Dated : 16th May, 1987.

A.S. CHALIA,
Presiding Officer,
Labour Court, Faridabad.

Endstt. No. 992, dated 21st May, 1987.

Forwarded: (four copies) to the Commissioner & Secretary to Government, Haryana Labour & Employment, Deptt. Chandigarh, as required under Section 15 of I.D. Act.

A.S. CHALIA,
Presiding Officer,
Labour Court, Faridabad.

The 8th July, 1987

No. 9/1/87-5Lab./4846.—In pursuance of the Provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the Management of M/s (i) General Manager, Haryana Roadways, Kaithal (ii) State Transport Commissioner, Haryana Chandigarh.

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA

Ref. No. 94 of 1984

SHRI RAM KALA, DRIVER NO. 61, C/O TRADE UNION COUNCIL, PATIALA AND THE MANAGEMENT OF THE MESSERS GENERAL MANAGER, HARYANA ROADWAYS, KAITHAL
(II) STATE TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH,

Present.— Shri Rajeshwar Nath, for workman.
Shri R. R. Goyal, for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—vide clause (C) of sub-section (i) of section 10 of Industrial Disputes Act, 1947 referred dispute between Shri Ram Kala and Messrs State Transport Commissioners, Haryana, Chandigarh etc. to this Court. The terms of the reference are as under :—

“Whether termination of services of Shri Ram Kala is justified and correct, if not, to what relief is he entitled?”

Workman through his statement of claim urged that he joined service of respondent management as a Driver and served the management for eight months, his services were terminated on 21st October, 1982 without any notice, charge-sheet, inquiry or compensation. He prayed that his termination is illegal, unjustified. It be declared null & void. He prayed for his reinstatement with continuity in service and with full back wages.

Respondent management contested the dispute and contended that Shri Ram Kala was appointed as a Driver purely on temporary basis,—vide Order dated 9th March, 1982. His services were liable to be terminated at any time without prior notice, assigning any reason. He had caused an accident and damaged the bus badly due to his negligent or rash driving on 16th October, 1982 due to that fact his services were terminated without any notice, charge sheet, inquiry because he had not completed service of 240 days. It was also urged that before passing the termination order explanation of the workman was called at two occasions which was found most unsatisfactory. Ultimately, the competent authority terminated workman as per terms and conditions of the appointment of workman.

Workman filed replication through which he controverted the allegations of the respondent management.

On the pleadings of the parties the following issues were framed :—

Issues are:

1. Whether termination order, dated 21st October, 1982 is according to law, if not, its effect ? OPM'
2. Relief...

I have heard Shri Rajeshwar Nath for workman and Shri A. R. Goyal for respondent management and have perused the oral and documentary evidence placed on the file. My issue-wise findings are as under :—

Issue No. 1 :

In support of this issue management examined Shri Mohinder Singh RW-1 who deposed that he was brought the service record of Shri Ram Kala workman. He was appointed, —wide order copy of the same is Ex. M1 and his services were terminated, —wide order copy of that is Ex. M2. There were two allegations against Shri Ram Kala. Firstly, he remained absent from his duty and on 16th October, 1982 near village Dand he caused accident.

Shri Ram Kala examined AW-1 Shri Satpal who stated that one Achal Singh Driver was appointed on 22nd May, 1985, Shri Hoshiar Singh on 1st May, 1985, Parghat Singh on 24th May, 1985, Ravinder Singh on 1st May, 1985, Om Parkash on 1st May, 1985, Jal Singh on 23rd May, 1985, Mangal Singh on 1st May, 1985 and Ravinder Singh on 23rd May, 1985. Shri Ram Kala Driver appeared as AW-2 he supported his case by saying that he served the respondent for eight months and used to get Rs. 650.60 per month. On 21st October, 1982 he was terminated. Certain junior persons are still in the job of respondent management. Before terminating his services no notice, no charge-sheet, no compensation was paid to him. In cross-examination he admitted that he joined service of respondent management after accepting the conditions mentioned in order of appointment Ex-M1. He also admitted that on 16th October, 1982 he caused accident of bus.

In view of the above evidence I would like to refer condition of appointment of workman as mentioned in Ex. M-1. which reads that Shri Ram Kala S/o Shri Nur Singh has been appointed as a Driver on temporary basis. His services are liable to be terminated at any time without prior notice, assigning any reason. This fact has been admitted by the workman himself in his cross-examination. Workman has also admitted that he caused an accident on 16th October, 1982 with the bus of the respondent and also caused damage to it. It is also admitted fact between the parties that workman Ram Kala had not completed service of 240 days in those circumstances there was no necessity upon the respondent management to comply with the provisions of section 25 (F). Moreover in view of terms and conditions of the appointment of workman which are mentioned as well as admitted by the workman himself in his cross-examination. His services were liable to be terminated at any time without prior notice assigning any reason. Had the workman would have not caused accident with his bus and would have not damaged it, as it has been admitted by the workman himself in those circumstances there was no necessity for terminating his services. If the workman would have completed service of 240 days or more than that in those circumstances it was incumbent upon the respondent management to have served notice or to have paid one month pay, in lieu of notice period as well as retrenchment compensation since workman had not completed service of 240 days so as per service condition no notice, no charge-sheet was served upon him and his services were rightly dispensed with. Accordingly, this issue is decided, in favour of management against the workman.

Issue No. 2 :

For the foregoing reasons on the basis of my findings on issue No. 1 the termination order passed by the management is just and correct, so I pass award regarding the controversy between the parties accordingly.

Dated the 1st May, 1987.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endst No. 989, dated 2nd May, 1987

Forwarded (Four Copies) to the Financial Commissioner & Secretary to Govt., Haryana, Labour & Employment Depts., Chandigarh as required under section 15 of Industrial Disputes Act, 1947

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

The 7th July, 1987.

No. 9/3/87-6 Lab./3893—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/S Prem Industries Pvt. Ltd., Mehrauli Road, Gurgaon.

IN THE COURT OF SHRI A. S. CHALIA, PRESIDING OFFICER, LABOUR COURT
FARIDABAD

Reference No. 102 of 1984.

Between

SHRI OMENDER, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S
PREM INDUSTRIES PVT. LTD., MEHRAULI ROAD, GURGAON

Present :—

Shri Mahavir Tyagi, for the workman.
Shri A. D. Kolhatkar, for the management.

AWARD

This reference under Section 10(1)(c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour) vide—its endorsement No. ID/GGN/11-84/19518—23 dated 17th May, 1984 to adjudicate upon the dispute of service matter covered by Second Schedule under Section 17 of the said Act, arisen between Shri Omender, workman and the respondent management of M/S Prem Industries, Pvt. Ltd., Mehrauli Road, Gurgaon. Accordingly, it has been registered as Reference No. 102 of 1984.

2. Omender claims that he was appointed by the respondent on 19-6-1981 as a operator at monthly wages of Rs. 400/- and he was not allowed to resume duty on 19th June, 1983. The allegations are that his services have been illegally terminated and as such he accordingly be reinstated.

3. On notice, respondent has contested the said claim. According to it he has never been in its employment and false claim is being made.

4. On the pleadings of the parties, my learned predecessor had framed the following material issues on 14-9-1984 :—

- (i) Whether respondent has not been properly named and its effect ;
- (ii) Whether there is no relationship of employer and employee between the parties ;
- (iii) As per reference ;

5. In support of the said plea respondent has examined Clerk of Conciliation Officer and Shri Harish Jain, Manager and further Chander Singh Manager Local Office, ESI also. On the other hand there is statement of Omender workman only.

I have heard the parties as represented above. My finding on issue-wise are as below :—

6. *Issue No. 1* :—It has been pointed out by the respondent that its correct name is M/S Prem Industries only. While the reference has been made against Prem Industries Pvt., Ltd. and as such reference against the same is a bad one. There was force in this objection and workman had to get amended the same. State Government had issued correction vide—its order dated 3rd May, 1985 and accordingly correction has been made in the reference itself. Now it stands against Prem Industries Mehrauli Road, Gurgaon only. It meets the said objection.

7. *Issue No. 2 and 3* :—Both the issues inter-linked and as such are to be disposed off together. It has been contended that respondent has never worked in its Establishment Ex. M-2 are the copies of respondent's muster roll starting from April, 1983 to June, 1983. Further Ex. M-3 is the copy of wages register and therein no mention is made about the name of this workman. Reliance has also been made on Ex. M-1 comments of respondent before the Conciliation officer to the effect that he had never worked in its factory. Its manager MW-2 has also deposed on oath. The matter appears to be quite clear from the statement of Omender. It has been admitted by him that Om Pal his brother used to do job work of respondent under the name and style of Om Parkash and Company and his form was filled in by the manager of the respondent. He has denied the suggestion that as a matter of fact he has worked with his brother. As a matter of fact this workman has no documentary evidence in his favour and on the other hand, respondent has led negative evidence to prove that he never worked in its establishment. In my opinion, there is no reason to disbelieve the respondent version and as such I decline the request of the worker. The reference is hereby accordingly answered against him.

Dated the 26th May, 1987

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

Endstt. No. 1044 dated the 26th May, 1987.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department Chandigarh as required under Section 15 of I. D. Act.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.